

July 30, 1991

MEMORANDUM

TO: The Honorable Robert A. Alm, Director,
Department of Commerce and Consumer Affairs

FROM: Lorna J. Loo, Staff Attorney

SUBJECT: Clarification of OIP Opinion Letter No. 91-1 (Feb. 15, 1991) Regarding Public Access to Massage Therapist License Applications

The Office of Information Practices ("OIP") previously issued OIP Opinion Letter No. 91-1 (Feb. 15, 1991) regarding public access to massage therapist license applications under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"). In response to several requests for clarification of OIP Opinion Letter No. 91-1, the OIP herein provides further guidance regarding the public disclosure of massage therapist license applications ("application") maintained by the State's Department of Commerce and Consumer Affairs ("DCCA").

ISSUE PRESENTED

Whether, under the UIPA, the DCCA is required to make available for public inspection and duplication an entire massage therapist license application in the format in which it is maintained by the DCCA.

BRIEF ANSWER

The DCCA must disclose a massage therapist license application in the format in which it is maintained in its entirety, rather than in a segregated or summarized fashion. Section 452-9, Hawaii Revised Statutes, states that the records of the Board of Massage ("Board") shall constitute public

records, and this statute expressly includes "all applications" as part of the Board's records. Because the disclosure of a massage therapist license application is authorized by a specific statute, the UIPA requires that the disclosure of this information must be granted "[a]ny provision to the contrary notwithstanding." Haw. Rev. Stat. . 92F-12(b) (2) (Supp. 1990).

Therefore, contrary to the conclusion previously reached in OIP Opinion Letter No. 91-1, the UIPA exceptions to disclosure, including the exception for a clearly unwarranted invasion of privacy, cannot be applied to a massage therapist license application. Consequently, when public disclosure of a massage therapist license application is requested, the DCCA cannot segregate and withhold any part of the application, nor can it merely provide a summary of the application information. Rather, the massage therapist license application must be made available for public inspection in its entirety pursuant to section 452-9, Hawaii Revised Statutes.

FACTS

The OIP received a letter dated July 20, 1990, from Senator Russell Blair, requesting an advisory opinion regarding whether, under the UIPA, the DCCA must publicly disclose a massage therapist license application either before or after such a license has been granted. In response to this request, the OIP issued OIP Opinion Letter No. 91-1 (Feb. 15, 1991). In that advisory opinion, we concluded that the DCCA must publicly disclose certain information set forth in an application of a massage therapist licensed by the DCCA. We also concluded that an application for which a license has not been issued or has been denied, and some information contained in an application for which a license has been issued, fell under the protection of the UIPA exception for a clearly unwarranted invasion of privacy.

After the issuance of OIP Opinion Letter 91-1, the DCCA received several requests from the public for the disclosure of certain massage therapist license applications. Instead of making the requested applications or copies thereof available for inspection and duplication in the format that they are maintained by the DCCA, the DCCA responded to the requests by compiling certain information from the applications that was deemed to be public in the OIP advisory opinion. Thereafter, Senator Rick Reed and Ms. Eve Clute each requested the OIP for an advisory opinion regarding whether the UIPA requires the DCCA to allow public inspection and duplication of an entire massage therapist application in the format in which it is maintained by

the DCCA, rather than just a summary of certain information taken from the application.

DISCUSSION

In OIP Opinion Letter No. 91-1, we opined that under the UIPA, the DCCA is required to make available for public inspection and duplication those portions of the application containing public information that are reasonably segregable. We noted that where segregation may not be reasonable, "rather than attempt segregation of the record, the DCCA may choose, but is not required, to provide a summary of the particular public information requested from the Application in order to fulfill its duties under the UIPA." OIP Op. Ltr. No. 91-1 at 14; (Feb. 15, 1991); see Haw. Rev. Stat. . 92F-11(c) (Supp. 1990).

However, based upon our further research, we find that providing a summary of a massage therapist license application is not an option available to the DCCA under the UIPA. Specifically, we believe that under section 452-9, Hawaii Revised Statutes, the DCCA is required to publicly disclose a massage therapist license application in the format in which it is maintained by the DCCA in its entirety. With regard to the records of the Board of Massage, which is administratively attached to the DCCA, section 452-9, Hawaii Revised Statutes, provides:

. 452-9 Records of board. The board shall keep a record of all of its proceedings and activities including all applications, and the action taken thereon. The books and records of the board shall be prima facie evidence of matters therein contained, and shall constitute public records.

Haw. Rev. Stat. . 452-9 (1985) (emphases added).

Section 452-9, Hawaii Revised Statutes, expressly includes "all applications" as part of the Board's "record[s]," and as such, they "shall constitute public records." Because massage therapist license applications maintained by the Board are required to be disclosed to the public under section 452-9, Hawaii Revised Statutes, they constitute "[g]overnment records which pursuant to federal law or a statute of this State, are expressly authorized to be disclosed to the person requesting access." Haw. Rev. Stat. . 92F-12(b)(2), as amended by Act 167, . 1, 1990 Haw. Sess. Laws. The UIPA requires that such records authorized by a specific statute to be disclosed shall be made

available for public inspection and duplication "[a]ny provision to the contrary notwithstanding." Id.

Based upon the legislative history of section 92F-12, Hawaii Revised Statutes, we conclude that the language "[a]ny provision to the contrary notwithstanding" contained therein suggests that the UIPA's exceptions to disclosure set forth in section 92F-13, Hawaii Revised Statutes, cannot be applied to any of the records listed in section 92F-12, Hawaii Revised Statutes, including those government records authorized by a specific statute to be disclosed, such as massage therapist license applications. See S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 817, 818 (1988) (exception for privacy does not apply to records set forth in section 92F-12, Hawaii Revised Statutes); see also OIP Op. Ltr. No. 89-8 (Nov. 20, 1989) (certified payroll records). Therefore, contrary to the conclusion previously reached in OIP Opinion Letter No. 91-1, we find that no UIPA exception, including the exception for a clearly unwarranted invasion of privacy, may apply to any information contained in a massage therapist license application.¹

Consequently, in order to meet the mandate of the UIPA, the DCCA cannot segregate and withhold any portion of a massage therapist license application, nor can it provide a summary of the application information. See Haw. Rev. Stat. . 92F-12 (b)(2) (Supp. 1990). Instead, the DCCA is required to publicly disclose a massage therapist license application in the format in which it is maintained by the DCCA in its entirety.

¹Our original conclusion in OIP Opinion Letter No. 91-1 (Feb. 15, 1991) regarding the applicability of UIPA exceptions to massage therapist license applications is incorrect for the reasons set forth in this discussion. However, OIP Opinion Letter No. 91-1 can still be referred to for guidance in applying the relevant UIPA exceptions to information contained in those vocational or professional license applications for which there is no specific statute expressly mandating, or prohibiting, public access. Apparently, the license applications maintained by the DCCA for a majority of the vocations and professions that it regulates, other than massage therapy, are not expressly made public or confidential by a specific statute.

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CONCLUSION

Because the disclosure of a massage therapist license application is expressly authorized by section 452-9, Hawaii Revised Statutes, the UIPA requires that the disclosure of this information be granted "[a]ny provision to the contrary notwithstanding." Haw. Rev. Stat. . 92F-12(b)(2) (Supp. 1990).

Therefore, the DCCA cannot segregate and withhold any part of a massage therapist license application nor provide a summary of the application information. Instead, the DCCA must disclose a massage therapist license application in the format in which it is maintained in its entirety.

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LJL:sc

c: Senator Russell Blair
Senator Rick Reed
Ms. Eve Clute

APPROVED:

Kathleen A. Callaghan
Director